

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CH2533
)	HUD NO.: 05-09-0625-8
GREGORY GIBSON)	ALS NO.: 09-0607
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane M. Viverito, and Nabi Fakroddin, upon Gregory Gibson's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CH2533; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On February 18, 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent, which he perfected on March 16, 2009. The Petitioner alleged that Lawson House YMCA ("YMCA") altered the terms, conditions and privileges of his real estate transaction because of his various physical disabilities, including traumatic brain injury and epilepsy (Count A and C), and failed to accommodate his physical disabilities (Count B), in violation of Sections 3-102.1(B) and 3-102.1(c)(2) of the Illinois Human Rights Act (the "Act"). On September 21, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On October 23, 2009, the Petitioner filed a timely Request. The Respondent timely filed its Response to the Request. Thereafter the Petitioner filed a timely Reply to the Response.
2. The Petitioner suffers from traumatic head injury and epilepsy. The Petitioner's disabilities cause him to have difficulty using the right side of his body and his left hand. The Petitioner further states in his Request that he uses a wheelchair 80% of the time.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. The YMCA offers affordable housing units for rent. The Petitioner had been leasing a unit from the YMCA since at least 2002.
4. The YMCA issued identification cards to all of its residents and required its residents to show their identification cards to YMCA security when entering its premises. If the resident does not have his YMCA identification card available, then the YMCA will accept a state-issued photo identification card.
5. The YMCA was aware of the Petitioner's disabilities. As an accommodation for the Petitioner's disabilities, the YMCA supplied the Petitioner with a lanyard. This allowed the Petitioner to hang his identification card from a string around his neck, in a manner clearly visible to YMCA security. Therefore, the Petitioner did not have to use his hands to remove the identification card from his pocket or wallet in order to display his identification card to YMCA security. However, the Petitioner did not always use the lanyard, for reasons the Petitioner does not explain.
6. On May 28, 2008, the Petitioner left the YMCA's premises without his identification card. When the Petitioner tried to re-enter the premises, the YMCA's security guard did not allow the Petitioner to enter the premises because he did not have his YMCA identification card nor any other form of identification. The YMCA's security declined the Petitioner's request to be admitted onto the premises without showing any form of identification.
7. On September, 8, 2008, the YMCA issued the Petitioner a thirty-day notice to terminate his tenancy for material non-compliance with his lease, which included the Petitioner's history of violating YMCA's rules. In particular the YMCA documented the following violations by the Petitioner: **(a)** On April 5, 2008, the Petitioner violated the YMCA no-smoking policy when he was caught smoking directly in the front entrance; **(b)** On April 16, 2008, and April 17, 2008, the Petitioner again violated the YMCA's no-smoking policy when he was caught smoking in the front entrance of the building; **(c)** On April 23, 2008, April 24, 2008, June 27, 2008, and July 3, 2008, the Petitioner refused to show identification when entering the building and he used profanity towards the security staff; **(d)** In July 2008, the Petitioner removed furniture without authorization; **(e)** On August 28, 2008, the Petitioner used profanity towards the YMCA's security staff.
8. In Count A of his charge, the Petitioner alleged that he was denied entry to the YMCA's premises on May 28, 2008, because he is disabled. In Count B, the Petitioner alleged the YMCA failed to reasonably accommodate his disabilities when it refused to admit him onto the premises without displaying any identification. In Count C, the Petitioner alleged the YMCA issued him the 30-day notice on September 8, 2008, because he is disabled.

9. In his Request, the Petitioner argues that the evidence has not been fully considered because not all witnesses have been interviewed. The Petitioner also argues that a previous security firm retained by the YMCA used to permit him to enter the premises without showing identification.
10. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues there is no evidence the YMCA treated a similarly situated tenant outside the Petitioner's protected class more favorably under similar circumstances. The Respondent found no evidence the Petitioner had ever requested that the YMCA accommodate his disabilities by granting the Petitioner permission to enter YMCA's premises with showing any identification. Finally, the Respondent found no substantial evidence that the YMCA's articulated non-discriminatory reason for issuing the Petitioner a 30-day notice was a pretext for disability discrimination.
11. In his Reply, the Petitioner asks the Commission to amend his charge to include additional claims of discrimination.

CONCLUSION

The Commission concludes that the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

As to Count A, the Commission finds there is no substantial evidence that the YMCA altered the terms, conditions and privileges of the Petitioner's real estate transaction. Specifically, there is no substantial evidence the YMCA allowed non-disabled tenants to enter its premises without displaying any identification. Rather, the Petitioner was treated the same as all other tenants at the YMCA.

As to Count B, there is no substantial evidence the YMCA failed to reasonably accommodate the Petitioner's disabilities. In fact, the YMCA did reasonably accommodate the Petitioner's disabilities. In particular, because the Petitioner's disabilities made it difficult for him to use his hands to display his identification card, the YMCA provided him with a lanyard so the Petitioner could simply display his identification card from a string around his neck. The Petitioner's failure or refusal to use the lanyard does not give rise to a claim against the YMCA.

Further, the Petitioner's requested accommodation, which was that the YMCA exempt the Petitioner from ever having to show identification, was not reasonable, because the Act does not require landlords to accommodate tenants by implementing policies that would jeopardize the safety of others.

Nothing in this Section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of others or would result in substantial physical damage to the property of others.

775 ILCS 5/3-102.1(K) (West 2010)

The YMCA had in place a reasonable security rule intended to protect the safety of its residents and staff. The Petitioner's requested accommodation would directly compromise the safety of the YMCA's premises and tenants. As such, the Petitioner's requested accommodation was not reasonable under the Act.

As to Count C, the Commission finds no substantial evidence the YMCA issued the Petitioner a 30-day notice to terminate his tenancy because of his disabilities. There is no evidence the YMCA's stated non-discriminatory reason for issuing the 30-day notice to the Petitioner was pretextual. Rather the notice was issued after the Petitioner had violated several of the YMCA's rules over a four-month time period immediately preceding the issuance of the 30-day notice. The Petitioner has not offered additional evidence in either his Request or Reply which suggests the YMCA's action was motivated by his disabilities.

Finally, the Commission cannot amend the charge currently under review to add additional claims of discrimination, as was requested by the Petitioner in his Reply. On a request for review, the Commission is limited to reviewing the allegations in the original charge, and cannot consider new allegations or claims of discrimination raised for the first time in a request for review. See 775 ILCS 8-103 (West 2010); see also Deen v. Lustig, et al., 337 Ill.App.3d 294 (4th Dist. 2003).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Lawson House YMCA as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 12th day of May 2010.

Commissioner Munir Muhammad

Commissioner Diane Viverito

Commissioner Nabi Fakroddin